Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
)	File No. 0000709383
Western Communications Services, Inc.)	

Order

Adopted: December 6, 2002 Released: December 9, 2002

By the Deputy Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. Introduction

1. On April 17, 2002, JPJ Electronic Communications, Inc. Rene Matthew Corporation ("JPJ") filed a Petition to Deny ("Petition") against the above-captioned long-form application (FCC Form 601) of Western Communications Services, Inc. ("Western"). Western, which was among the winning bidders of the Lower and Upper Paging Bands Auction No. 40 ("Auction No. 40"), was granted a bidding credit as a very small business entity. In its Petition, JPJ argues that Western failed to disclose the names of all of its officers as required by section 1.2112(b)(1)(i) of the Commission's rules for purposes of determining whether Western qualified for the bidding credit. JPJ requests, in the alternative, that the Commission reconsider its decision to deny JPJ bidding credits and apply such credits to the licenses acquired by JPJ in Auction No. 40. For the reasons discussed below, we dismiss the Petition for lack of standing. As further discussed below, we would dismiss the Petition as moot even if we addressed the merits.

II. Discussion

2. We find that JPJ has failed to demonstrate the requisite standing to file a Petition to Deny. Section 309(d)(1) of the Communications Act, as amended, permits any "party in interest" to file a petition to deny an application.³ In general, to establish standing, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.⁴ The petition must further demonstrate a causal link between the claimed injury and the challenged action.⁵

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¹ See 47 C.F.R. § 1.2110(f)(2)(i) (setting forth bidding credit criteria).

² See Petition at 4-5.

³ 47 U.S.C. § 309(d)(1).

⁴ See Minnesota PCS Limited Partnership, Order, 17 FCC Rcd. 126, 128 (CWD 2001); Black Crow Wireless, L.P., Order, 16 FCC Rcd. 15,643, 15,644-45 (CWD 2001) ("Black Crow Wireless").

⁵ See Americatel Corp., Memorandum Opinion, Order, Authorization and Certificate, 9 FCC Rcd. 3993, 3995 (1994); Black Crow Wireless, 16 FCC Rcd. at 15,644-45.

In the auctions context, the Wireless Telecommunications Bureau has adopted the general rule that a petitioner, to establish standing to challenge an application or license in a particular market, must demonstrate that it was qualified and eligible to bid in that market.⁶ JPJ was not a qualified bidder in the market that Western won.⁷ Accordingly, we dismiss the Petition for lack of standing.

- 3. Even if JPJ had demonstrated standing, we would dismiss the Petition as moot. JPJ contends that Western was ineligible to receive a bidding credit because its short-form application (FCC Form 175) was incomplete. On December 6, 2002, the Policy and Rules Branch of the Commercial Wireless Division rescinded Western's bidding credit. Accordingly, even if we were to consider the Petition on the merits, we would dismiss it as moot.
- 5. JPJ's arguments and alternative request for relief in its Petition suggest that its main complaint is the denial of its claim for bidding credits. A petition to deny another entity's application is not the appropriate vehicle for requesting reconsideration of the denial of the petitioner's request for a bidding credit. In this case, even if we were to consider JPJ's alternative request for reconsideration, we would dismiss it as untimely. Section 1.106(f) of the Commission's rules requires that petitions for reconsideration be filed within 30 days from the date of public notice of the challenged action. JPJ was notified that its request for bidding credits was denied on October 17, 2001. The instant Petition was filed on April 17, 2002, six months after that action and well after the 30-day deadline for filing a petition for reconsideration.

III. Ordering Clause

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 0.331 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by JPJ Electronic Communications, Inc. Rene Matthew Corporation on April 17, 2002 IS HEREBY DISMISSED.

Federal Communications Commission

Linda C. Ray Deputy Chief, Policy and Rules Branch Commercial Wireless Division Wireless Telecommunications Bureau

⁹ See Letter from Amal A. Abdallah, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to Richard S. Becker, dated December 6, 2002.

⁶ Alaska Native Wireless, LLC, *Order*, 17 FCC Rcd. 4231, 4235-36 (WTB 2002); Radiofone Nationwide PCS, LLC and Harbor Wireless LLC, *Order*, 16 FCC Rcd. 792, 793 (CWD 2001).

⁷ Western won one license in Basic Economic Area ("BEA") 126. *See* Lower and Upper Paging Bands Auction Closes, *Public Notice*, DA 01-2858 (rel. Dec. 11, 2001). JPJ sought 308 licenses in BEA4, BEA5, BEA6, BEA7, BEA8, BEA9 and BEA10. *See* JPJ FCC Form 175, submitted October 3, 2001.

⁸ See Petition at 4-5.

¹⁰ See 47 C.F.R. § 1.106(f).

¹¹ Letter from Kathy Garland, Chief, Auctions Operations Branch, Wireless Telecommunications Bureau to Joseph Rositano, President, JPJ Electronic Communications, dated October 17, 2001; Auction of Licenses for Lower and Upper Paging Bands; 193 Qualified Bidders, *Public Notice*, 16 FCC Rcd. 18,575 (2001) (released October 17, 2001).